Supreme Court, U. S.
FILED
SEP 5 1980
MICHAEL RODAK, JR., CLERK

80-375

IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM 1980

NO.

WILLIAM SHAMES,
Petitioner,

vs.

SYRREL LEHMAN SHAMES,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the Supreme Court of California

ALBERT M. KUN
530 Jackson Street
San Francisco, CA 94133
(415) 362-4000

Attorney for Petitioner

QUESTION PRESENTED

May the California state courts exercise in personam jurisdiction over a nonresident, nondomiciliary without minimum contacts to the State of California.

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Argument	
1. CERTIORARI SHOULD BE GRANTED TO SETTLE AN IMPORTANT AND PRESENTLY UNSETTLED QUESTION OF CONSTITUTIONAL LAW: NAMELY WHETHER CALIFORNIA'S LONG ARM STATUTE, AS APPLIED IN THIS CASE IS A VIOLATION OF DUE PROCESS UNDER THE FOURTEENTH AMENDMENT.	

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CONSTITUTION

Constitution of the United States

Fourteenth Amendment ... 3

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PETITION FOR A WRIT OF CERTIORARI
To the Supreme Court of California.

Petitioner, WILLIAM SHAMES, prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of California entered in the case of the MARRIAGE OF SHAMES, on June 11, 1980.

OPINIONS BELOW

The opinion of the Supreme Court of California sought to be reviewed by this Court is reproduced herein as Appendix A. The Opinion in the District Court of Appeal is reproduced herein as Appendix B. The opinion of the Superior Court is reproduced herein as Appendix C.

JURISDICTION

The opinion of the Supreme Court of California to be reviewed was filed June 11, 1980. The jurisdiction of this Court is invoked pursuant to 28 U.S.C.A., Section 1257(3).

QUESTION PRESENTED

May the California state courts exercise in personam jurisdiction over a nonresident, nondomiciliary without minimum contacts to the State of California.

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED

Constitution of the United States:

Fourteenth Amendment:

"... nor shall any State deprive any person of life, liberty, or property, without due process of law..."

STATEMENT OF THE CASE

Petition is a resident and domiciliary of the State of Texas. His home is there, and his automobile is registered there. He has a Texas driver's license and will file his income tax returns there. His previous income tax returns have been filed in the State of New York. His only connection to the State of California is the approximately 3 month period he visited his wife, the Respondent herein, in 1977 and 1978.

Respondent has filed an action for dissolution of marriage in the Superior Court of the City and County of San Francisco, State of California, on November 6, 1979.

Petitioner was served with process on November 19, 1979, at 5000 Brush Hollow Road, Westbury, Nassau County, State of New York.

Petitioner has properly filed a motion to quash service of summons in the San Francisco Superior Court. The motion to quash service of summons was denied on April 11, 1980. Thereafter Petitioner has filed a Petition for Writ of Mandate in the Court of Appeal of the State of California, First Appellate District. The Petition for Writ of Mandate was denied on May 16, 1980. On May 21, 1980, Petitioner has filed a Petition for Hearing before the Supreme Court of the State of California. This Petition was denied on June 11, 1980.

FEDERAL JURISDICTION IN THE TRIAL COURT

The federal questions to be reviewed were raised in the San Francisco Superior Court by the way of a Motion to Quash Service of Summons. The motion was denied.

REASONS FOR GRANTING THE WRIT

This matter concerns an important question of constitutional and federal law, which has not been, but should be, settled by this Court.

In International Shoe Co. v. Washington (1945) 326 US 310, 90 L Ed 95, 66 S Ct. 154, this Court prohibited a state Court from making a binding Judgment against an out of state defendant unless the defendant has sufficient "minimum contacts" with the forum state to insure that maintenance of the suit there does not offend traditional notions of fair play and substantial justice.

In Shaffer v. Heitner (1977) 433 US 186, 53 L Ed 2d 683, 701, 97 S Ct 2569, this Court held that although the presence of the defendant's property in a state might suggest the existence of other ties among the defendant, the state, and the litigation sufficient to support jurisdiction, the presence of defendant's property alone was not enough to do so.

As in Kulko v. California Superior Court 56 L Ed 2d 132, 98 S Ct __ , the cause of action in the case at bench arose from petitioner's domestic relations.

In Kulko this Court has held that temporary visits to the State cannot be the basis for judicial jurisdiction over an out-of-state defendant. Petitioner, WILLIAM SHAMES, has had only two temporary visits to California, three month periods each in 1977 and 1978. He has never established domicile in California, by registering to vote here or otherwise.

An essential criterion in all cases is whether the quality and nature of the non-resident defendant's activity is such that it is reasonable and fair to require him to conduct his defense in the forum state.

Petitioner and Respondent were validly married in the State of Nevada. Thereafter Petitioner has returned to New York and Respondent to California. Petitioner has never made California his residence, he never voted here, his mere activity consisted of cosigning

a lease for the Respondent and guaranteeing a mortgage for Respondent's son from a previous marriage. But, this Court has held in Hanson v. Dencla, 357 US 253, 2 L Ed 2d 1283, 78 S Ct 1228 that

> "The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State... It is essential in each case that there be some act by which the defendant purposefully avails himself at the privilege of activity within the forum state."

Petitioner has received no benefit from either of the above activities, the cosigning of the lease benefited the Respondent as she is still residing in the apartment, and the guaranteeing of the mortgage benefited Respondent's son since Petitioner never resided there.

For the preceding reasons, Petitioner respectfully requests that this Court grant his Petition for Certiorary to the Supreme Court of the State of California.

Dated: Sept.2, 1980

Albert M. Kun

ALBERT M. KUN,
Attorney for Petitioner

CERTIFICATE OF MAILING

I, ALBERT M. KUN, certify as follows:

That I am a member of the Bar of this Court having been admitted June 23, 1980.

That on September 4, 1980, I mailed a copy of the Petition for a Writ of Certiorari to the following persons and entities as required by U.S. Supreme Court Rule 331:

Gwendolyn V. Mitchell
Attorney at Law
141 Battery Street, Suite 555
San Francisco, CA 94111

Executed on September 4, 1980, at San Francisco, California.

I declare, under penalty of perjury, that the foregoing is true and correct.

Albert M. Kun

ALBERT M. KUN

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

JUN 11 1980

I have this day filed Order

In re: 1 Civ. *No.* 49543

~~Marriage of Shames~~

vs.

Respectfully,

Clerk

72076.977 7-79 4M OSP

Exhibit A

10

ORIGINAL

Court of Appeal of the State of California

IN AND FOR THE

First Appellate District

FILED

MAY 16 1980
Court of Appeal - First App. Dist.
CLIFFORD C. PORTER, Clerk
BY _____ DEPUTY

Division TWO

William Shames,
Petitioner,
vs.
Superior Court of the City and County of San Francisco,
Respondent,

No. 49543

San Francisco Superior Court No. 759990

Syrrell Lehman Shames,
Real Party in Interest.

BY THE COURT:

The petition for writ of mandate is denied.

Dated MAY 16 1980

Taylor P.J.

I, CLIFFORD C. PORTER, CLERK OF THE COURT OF APPEAL, STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT, DO HEREBY CERTIFY THAT THE PRECEDING AND ANNEXED IS A TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN MY OFFICE.

WITNESS MY HAND AND THE SEAL OF COURT
THIS 28 DAY OF May 1980
CLIFFORD C. PORTER CLERK
BY: _____ Deputy

Exhibit B

49543-111 1-77 5M 7 COP

EXHIBIT "A"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE CITY AND COUNTY OF SAN FRANCISCO

DEPARTMENT THIRTEEN

IN RE MARRIAGE OF

SYRREL LEHMAN SHAMES

Petitioner

and

WILLIAM SHAMES

Respondent

April 11 19 80

No. 759990

The motion to quash service of summons is denied.

DONALD B. KING

CERTIFICATE OF SERVICE BY MAIL (C.C.P. 1013a, 2015.5)

Undersigned certifies, under penalty of perjury, I am a citizen of the United States, over the age of eighteen years, not a party to the within cause. I served the attached document by depositing a true copy thereof in the U.S. Mail in San Francisco, California, enclosed in a sealed envelope with postage fully prepaid on APR 11 1980 and said envelope was addressed as follows:

ALBERT M. KUN 530 Jackson St. San Francisco
LAWRENCE H. STOTTER 141 Battery, San Francisco

JULITA V. [illegible]EZ

Deputy Clerk

Exhibit C

80-375

No. 80-735

Supreme Court, U. S.
FILED
OCT 4 1980
MICHAEL RODAK, JR., CLERK

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1980

WILLIAM SHAMES,
Petitioner,

v.

SYRREL LEHMAN SHAMES,
Respondent.

On Petition For A Writ of Certiorari To The Supreme Court of California

RESPONDENT'S BRIEF IN OPPOSITION

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Shaffer v. Heitner, 433 U.S. 186, 53 L.Ed.2d 683, 97 S.Ct. 2569 5

No. 80-735

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1980

WILLIAM SHAMES,
Petitioner,

v.

SYRREL LEHMAN SHAMES,
Respondent.

On Petition For A Writ of Certiorari To The Supreme Court of California

RESPONDENT'S BRIEF IN OPPOSITION

The Respondent, Syrrel Lehman Shames, respectfully requests that this Court deny the petition for writ of certiorari, seeking review of the affirmation by the appellate and supreme courts of the State of California of the California trial court's denial of Petitioner's motion to quash service of summons for lack of personal jurisdiction in an action for dissolution of marriage.

REASONS WHY THE WRIT SHOULD BE DENIED

1. Neither the Decision Below Nor the Record Raises the Question Presented in the Petition

The sole Question Presented in the petition (p. 2) is whether the California state courts may exercise in per-

sonam jurisdiction over a nonresident, nondomiciliary without minimum contacts to the State of California. But the trial, appellate, and supreme courts in California did not decide that question in this proceeding. The facts of record will not support a determination of that question by this Court.

(1) The record reflects that the trial court denied Petitioner's Motion to Quash Service of Summons for Lack of Personal Jurisdiction based on the submitted sworn declarations of the parties. Each party submitted a declaration under oath; the trial court, at the request of Petitioner-husband, allowed additional time for supplemental declarations to be submitted; and, of the parties, only Respondent-wife submitted a supplemental declaration.

(a) Respondent-wife's trial court declarations, made under penalty of perjury, with many supporting exhibits incorporated, stated in its most pertinent parts that Petitioner-husband and she were married in California on February 22, 1977 and, again, in Nevada on May 1, 1977; that the parties resided and were domiciled in California throughout their entire marriage to date of separation in July, 1979; that during the marriage and at the time service was effected in this action on November 19, 1979, Petitioner-husband owned an interest in real estate and a leasehold in California, was doing business in California, and was employed in California. Respondent further declared her continuing residence in California; that she had never been domiciled in Texas; and that Texas was an inconvenient forum for her. Attached to and incorporated in her declaration are more than a dozen documents, some of which are signed by Petitioner-husband, support-

ing each and every one of her declarations, including husband's California earnings statements during marriage, corporate papers, marriage certificate, and California leases. Wife's declaration details many other incidents of the California residency of the parties during the marriage.

(b) Petitioner husband's only declaration states that at the time of the marriage he was a resident and domiciliary of the State of New York, but gives no address other than the address from which income tax returns were filed. Respondent-wife in her supplemental declaration states that that address is a commercial office address in New York and is not, and never was, a residence. He states that he is now a resident of Texas, but gives no residential address. He further declares that he sold his interest in a corporation headquartered in Los Angeles, California on December 31, 1979, which constitutes an admission of his business interest ownership in California on the date he was served with and accepted summons in this action which was in November, 1979.

(2) *Inasmuch as the facts before the trial court were controverted, determination of judicial jurisdiction is discretionary, and there being no showing of abuse of discretion, no reason exists for the grant of certiorari.*

As has been made evident herein, the trial court ruled on the facts presented in the sworn declarations of the parties. Opportunity was afforded Petitioner-husband to submit supplemental declarations, which he failed to do. That court then, based on the controverted and uncontroverted facts before it, simply denied the motion to quash service of summons for lack of personal jurisdiction. The

act sought to be compelled is discretionary. The burden is on the Petitioner to show that the duty sought to be enforced does not entail judgment or discretion or allege acts showing a clear abuse of discretion. Petitioner failed to make any showing of abuse of discretion.

Petitioner-husband relies on the underlying basis of the rules of jurisdiction as found in *International Shoe Co. v. State of Washington* (1945) 326 U.S. 310, 66 S.Ct. 154. A state has power to exercise judicial jurisdiction over a person if that person's relationship to the state is such as to make the exercise of such jurisdiction reasonable under contemporary standards. This relationship includes all physical and nonphysical circumstances which may serve to link a person with a state.

There would be no lack of fair and substantial justice to require the Petitioner-husband (who has never given his address other than the New York business office address in this action) to submit to personal jurisdiction in California.

The specific reference to *Kulko v. California Superior Court,* 436 U.S. 84, 98 S.Ct. 1690, can be distinguished. The *Kulko* case required, for judicial jurisdiction, sufficient contacts between the party and the state to make the exercise of such jurisdiction reasonable under contemporary standards. Those contacts exist in the subject case. Dr. Kulko had no contacts with the state other than having allowed a teenaged child to reside with the mother in the state. Sufficient evidence existed in this case to form a basis for the California court rulings that a motion to quash service of summons for lack of personal jurisdiction should be denied.

The contacts which Respondent-wife declared under penalty of perjury that Petitioner-husband had with the State of California included more than mere ownership of property or co-signing a lease. The Petitioner-husband has had the "minimal contacts" with California that are a prerequisite to its exercise of power over him according to the sworn declaration of Respondent-wife and this cause of action arises out of acts done in California. Therefore, the standards preserved in *Hanson v. Denckla,* 357 U.S. 235, 2 L.Ed.2d 1283, 78 S.Ct. 1228, and *Shaffer v. Heitner,* 433 U.S. 186, 53 L.Ed.2d 683, 97 S.Ct. 2569, are met.

There were sufficient contacts alleged in this case to satisfy the constitutional requirements of due process. The determination was simply a matter of which party's statement was to be given greater credence. Respondent respectfully submits that the trial court exercised its discretion and, based on the law and the facts before it, no abuse of discretion was shown and affirmation by the appellate court and the Supreme Court of California was proper.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Dated: Sept. 30, 1980

Respectfully submitted,

By Lawrence H. Stotter
Attorney for Respondent